

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROYAL JOHNSON**, on February 13, 2003
at 3:00 P.M., in Room 317-B & C Capitol.

ROLL CALL

Members Present:

Sen. Royal Johnson, Chairman (R)
Sen. Corey Stapleton, Vice Chairman (R)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Gary L. Perry (R)
Sen. Don Ryan (D)
Sen. Emily Stonington (D)
Sen. Bob Story Jr. (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Services Division
Marion Mood, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: SB 62; SB 327;
SB 316; SB 290
Hearing & Date Posted: HB 266, 2/5/2003

CHAIRMAN ROYAL JOHNSON, SD 5, BILLINGS, informed the committee **Todd Everts** had prepared an analysis between the four telemarketing bills they had heard, and provided **EXHIBIT(ens32a01)**, coordination information, and **EXHIBIT(ens32a02)**, a comparison between SB 62 and SB 327, and asked **Mr. Everts** to explain the difference between these bills.

Mr. Everts advised considering SB 62 and SB 327 in tandem when taking Executive Action since they largely duplicated each other. He went on to explain there was a conflict in the language between SB 277 and SB 308, with the former providing more restrictions on automatic dialing than SB 308. He outlined the few differences between SB 62, a do-not-call list, and SB 327, a do-call list, and stated the application of each was basically the same, and they shared the same definition of telephone solicitation; SB 62 contained several exemptions whereas SB 327 provides for exemptions pursuant to federal law only; the provisions in SB 62 would be implemented by the Department of Justice, and SB 327 is under the auspices of the Department of Administration. He touched on a few other specifics in each of the two bills as outlined Exhibit 2 and offered to answer any questions the committee members might have.

EXECUTIVE ACTION ON SB 62

CHAIRMAN JOHNSON invited the sponsors of SB 62 and SB 327 to briefly recap their provisions and purpose. **SEN. COREY STAPLETON, SD 10, BILLINGS**, questioned the need for this since both bills had already been heard. **CHAIRMAN JOHNSON** thought it fair since their hearings had taken place over a month ago.

Motion: **SEN. RYAN** moved that SB 62 DO PASS.

Discussion:

SEN. DON RYAN, SD 22, GREAT FALLS, explained SB 62 was modeled after legislation from California and Missouri where it had worked effectively to cut down on telephone solicitation. He stated people have to ask to be put on this do-not-call list by either calling an 800-number or going online, and he stressed this was not an anti-business bill. He mentioned Congress in Washington, D.C. had just passed their no-call legislation which would affect interstate telemarketing calls; Montana could combine their list with the federal list. He stressed people were free to request their name be put on a do-not-call list of a company which had an exemption under SB 62 in order to avoid getting calls from them. He submitted **Amendment SB006206.ate, EXHIBIT (ens32a03)**, and explained this amendment was a purpose statement based on testimony **Cort Jensen** had given during the hearing; it strengthened his legislation to where it would stand up to any challenge.

Motion/Vote: **SEN. RYAN** moved that **AMENDMENT SB006206.ATE** BE **ADOPTED**. Motion carried unanimously.

SEN. RYAN introduced **Amendment SB006202.ate, EXHIBIT(ens32a04)** which contains three amendments and explained it changed the 501(c)(3) definition to "a nonprofit entity" as per the Attorney General's request as well as making two other minor changes. **CHAIRMAN JOHNSON** asked to move each amendment separately.

Motion: **SEN. RYAN** moved that **AMENDMENTS B006202.ATE, (1) BE ADOPTED.**

Discussion:

SEN. MIKE TAYLOR, SD 37, PROCTOR, asked for the reason behind this amendment. **SEN. RYAN** replied it gave flexibility to charity organizations by not confining them to the 501(c)(3) IRS code. **SEN. TAYLOR** wondered if this expanded the list of organizations and allowed the university system to make calls, which **SEN. RYAN** confirmed. **SEN. TAYLOR** inquired how many more groups would now be included, and **SEN. RYAN** replied he did not have the exact number but stated it included groups who were doing good work on behalf of charities. **SEN. TAYLOR** surmised it included any charitable organization which was nonprofit but did not have 501(c)(3) status and added there were 10,400 nonprofit organizations in this state who would be able to make telemarketing calls. **SEN. RYAN** stated he remembered this number from a previous bill but was certain many of those groups were now defunct and just had not been taken off the books. **SEN. KEN TOOLE, SD 27, HELENA,** wondered if churches were exempted in the original bill or whether this amendment provided for that. **SEN. RYAN** confirmed the amendment would grant the exemption. **CHAIRMAN JOHNSON** inquired whether it was the sponsor's intent to broaden the bill to include any nonprofit organization. **SEN. RYAN** repeated these amendments had been requested by the Attorney General, and it was up to the committee to adopt or exclude them. **SEN. GARY PERRY, SD 16, MANHATTAN,** was not sure whether the Alumni Association of the Montana State University was classified as 501(c)(3). **Bill Johnston** replied the Alumni Association was, but the campus as such was not. **SEN. BEA MCCARTHY, SD 29, ANACONDA,** asked which other associations in the university system were not classified as 501(c)(3) and, as such, would be allowed to make calls. **Mr. Johnston** explained most alumni associations and sports booster clubs were organized under 501(c)(3) but they were recognized under the foundations which were not 501(c)(3). **SEN. MCCARTHY** then stated the credit card issued through the university was issued through the Alumni Association which was a 501(c)(3). **Mr. Johnston** confirmed this. **SEN. TOOLE** asked for clarification on the various university groups, and **Mr. Johnston** advised most alumni associations were 501(c)(3) and some, particularly in larger states, had 501(c)(4) status. To his

knowledge, this was not the case in Montana; the entity holding and administering the money was a 501(c)(3). **SEN. BOB STORY, SD 12, PARK CITY**, commented the university was concerned about the nonprofit wording because they do make calls for scholarship funds. **SEN. RYAN** elaborated by passing this legislation, one would not see an increase in calls from these 10,400 nonprofits because under current law, without a do-not-call list, they already have the right to make these calls. **SEN. STAPLETON** disagreed, saying if the nonprofits were allowed to call offering credit cards and the private sector was not allowed to compete, it would increase the advantage the nonprofit organizations had. He was concerned with the increase in exemptions because the public's plea for putting an end to telemarketing calls was overwhelming, and this was not doing anything to stop the calls. **SEN. TOOLE** reminded the committee of a recent bill which restricted the 501(c)(3)'s ability to hold temporary liquor licenses; passage of this bill inadvertently affected many other nonprofit organizations, such as the Holter Museum, who happened to have different IRS classifications. He cautioned there were groups out there who did not fall under the obvious solicitor category but used telemarketers, and the intent was to allow nonprofit charities to continue to make their calls. **SEN. PERRY** told of a telephone message on his answering machine from a so-called nonprofit organization offering debt consolidation, and asked if this amendment allowed those calls because they certainly were not welcome. **SEN. STAPLETON** commented it was the sponsor's prerogative to bring forth this amendment but he, for one, did not like it, and did not like the bill, for the very reason **SEN. PERRY** had mentioned because there did not seem to be an urgency to be serious about stopping telemarketing calls. **SEN. RYAN** replied he had brought this bill at the request of the Attorney General because he wanted to see something done about telemarketing, and he brought this amendment because he did not want to inadvertently eliminate worthy groups on the basis of a tax code.

Vote: Motion carried 7-2 with MCNUTT and TAYLOR voting no; **SEN. STAPLETON** abstained.

Motion/Vote: **SEN. RYAN** moved that AMENDMENT SB006202.ATE (2) & (3) BE ADOPTED. Motion carried unanimously.

{Tape: 1; Side: B}

SEN. RYAN introduced Amendment SB 006201.ate, **EXHIBIT**(ens32a05), and explained this covered businesses such as the insurance agent by allowing a person in his employ to make calls in his place.

Motion/Vote: **SEN. RYAN** moved that AMENDMENT SB 006201.ATE BE ADOPTED. Motion carried unanimously.

Motion: SEN. STORY moved that AMENDMENT SB006207.ATE, EXHIBIT (ens32a06) BE ADOPTED.

Discussion:

SEN. STORY advised this amendment followed a recent discussion regarding the example of SEN. McNUTT's business, and it clarified a person was not a telemarketer if he was calling on behalf of a business and was a full-time employee of that business. SEN. TOOLE wondered if this would apply to the subsidiary of a business; SEN. STORY was not certain but stressed it had to be someone who was employed full-time and in the office full-time. SEN. EMILY STONINGTON, SD 15, BOZEMAN, wondered who would be left if this amendment was adopted to which SEN. STORY replied it was those who contract out to third parties. SEN. RYAN remarked the reason for Section 1 (3) (f) was so people selling insurance policies over the phone could not do so, and he feared this amendment might void this protection. SEN. STONINGTON asked if the scenario described above could not be solved by inserting "or business subscriber" after "residential subscriber" on line 28 on page 1, where it states "by or on behalf of any person or entity with whom a residential subscriber has had a business contact within the past 180 days or has a current business or personal relationship." SEN. STORY repeated he brought this amendment because of the original discussion, and he did not object if the committee members did not want to adopt it. CHAIRMAN JOHNSON asked SEN. McNUTT to voice his opinion on this issue. SEN. McNUTT replied his company employed full-time salesmen who did make sales calls as part of their duties. Since his business was seasonal, he was not sure if the 180 day business relationship covered these calls. He felt he might be able to solve this problem by instructing his sales people to make contact with each customer every 180 days but thought this went too far. SEN. STONINGTON claimed, since his was a seasonal business, it would constitute a business relationship if he called his customers once a year. Therefore, with her proposed change, he would be covered under the bill. SEN. McNUTT asked Mr. Jensen whether he agreed, and Mr. Jensen advised the federal rule regarding business contact was 18 months, and not 180 days, and it would be advisable to create conformity; secondly, between adding SEN. STORY's amendment and the nonprofit definition, everyone would be exempt because most telemarketers were nonprofit since call centers received nonprofit status. The way to exclude them was to add "charitable" to the term "nonprofit" because most telemarketers were not charitable nonprofit organizations. SEN. PERRY asked if line 29 on page 1 should be changed to read "18 months" instead of "180 days" as per Mr. Jensen's suggestion. SEN. RYAN disagreed, saying Montana had the right to leave it at

6 months instead of conforming to the federal rules so that signing up for a credit card or warranty service did not leave the consumer open for solicitation calls for the next 18 months.

Vote: Motion that AMENDMENT SB006207.ATE BE ADOPTED carried 6-4 with MCCARTHY, RYAN, STONINGTON, and TOOLE voting no.

Motion: SEN. STORY moved that AMENDMENT SB006205.ATE, EXHIBIT (ens32a07), BE ADOPTED.

Discussion:

SEN. STORY explained this amendment took the administration of the list out of the Attorney General's Office and put it with the Department of Administration because they were already enforcing telemarketing fraud. Mr. Everts added the amendment also eliminated the Advisory Group provided for in Section (6) on page 5 of the bill. SEN. TAYLOR agreed and said the Advisory Group would result in a duplication of efforts, and the money needed for it could be better spent elsewhere. SEN. RYAN referred back to the Fiscal Note and advised the Advisory Group was to work for free, and no estimates had been made for travel and per diem expenses. He explained the reason for this was because all involved entities had to work together to disseminate the information on how to access this do-not-call list under the auspices of the Attorney General's Office. He voiced concern this might create a potential turf war, maintaining the administration should remain with the Attorney General's office since they had been instrumental in getting this bill off the ground, and they were well equipped to deal with the enforcement of the law; he added he was opposed to this amendment. SEN. TOOLE voiced his opposition as well, stating enforcement should stay with a law enforcement agency if the public was to take this new law seriously. He felt the Department of Administration was underfunded, and thus did not deal with consumer complaints in a timely fashion. CHAIRMAN JOHNSON asked if he thought the people in the Department of Administration were not capable of handling this, and SEN. RYAN replied he thought they were trying, with the tools available to them. SEN. TAYLOR agreed with the funding assessment but maintained this would be moot once the program was up and running because money would flow into the account used to administer the list, no matter which office was chosen. SEN. TOOLE maintained the Attorney General's Office would lend more credibility to the program. SEN. STAPLETON failed to see why one department should be better suited than another, and he lauded Mr. Jensen's testimony throughout the telemarketing bill hearings which led him to believe that department would be more than capable of handling the job. SEN. TOOLE insisted a law

enforcement agency, such as the Attorney General in the Department of Justice, conveyed a much stronger image than the Department of Administration. **SEN. RYAN** pointed out this legislation was modeled after Colorado's where it was working well and where the Attorney General was overseeing its enforcement; he strongly opposed changing the rules. **SEN. TAYLOR** stated some of his business acquaintances in Colorado denied this law was working all that well, and he pointed out there currently were four lawsuits pending with regard to this issue.

Vote: **SEN. JOHNSON** asked for a Roll Call Vote. Motion carried 6-4 with **MCCARTHY, RYAN, STONINGTON, and TOOLE** voting no.

Motion: **SEN. STORY** moved to RECONSIDER ACTION ON AMENDMENT SB006207.ATE.

Discussion:

SEN. PERRY stated he voted for this amendment because of **SEN. McNUTT's** valid concerns even though it was a tough decision because he did not want to inadvertently broaden the definition of who was allowed to make these solicitous calls.

Vote: **SEN. JOHNSON** asked for a Roll Call Vote. Motion carried 6-4 with **STAPLETON, McNUTT, TAYLOR and JOHNSON** voting no.

SEN. STORY agreed with **SEN. PERRY's** concern and explained he had the amendment drafted because he wanted to help legitimate businesses who relied on their continued ability to call customers. He could see **Mr. Jensen's** point, though, where this amendment would throw the door wide open to especially those whose calls no one relished. He added it was not his intent to take everything out of **SEN. RYAN's** bill, he wanted it to be passed out of committee so the full body could discuss it and come up with an equitable solution.

Motion: **SEN. STORY** moved that AMENDMENT SB006207.ATE BE ADOPTED.

Discussion:

SEN. TAYLOR asked if **SEN. RYAN'S Amendment SB 006201.ate** which the committee had adopted earlier would be all that was needed to address **SEN. McNUTT's** concern.

{Tape: 2; Side: A}

Mr. Jensen advised it was not enough. Rather than voting to reverse the previous vote, **CHAIRMAN JOHNSON** suggested the committee vote a second time whether to adopt the amendment since

the previous action had been reconsidered. The members chose to do a roll call vote.

Vote: Motion that AMENDMENT SB 006201.ATE BE ADOPTED failed 1-9 with JOHNSON voting aye.

SEN. RYAN referred back to Amendment SB006202.ate which changed "501(c)(3)" to "nonprofit entity" where **Mr. Jensen** had suggested to replace it with "charitable organization" and asked if this would tighten up this legislation. **Mr. Jensen** replied "nonprofit" merely referred to the tax or business filing status; it was a broad term covering everything from The Red Cross to Major League Baseball. He went on to explain by Montana law, any debt consolidation business had to be nonprofit but they were not charities. "Charitable" tended to stand for the public good, and if "charitable" was combined with "nonprofit", it made for a small subset of businesses which had been granted and filed under nonprofit tax status and "charitable" which goes to their intent. **SEN. MCCARTHY** wondered whether this proposed legislation would be tightened up if, on page 1, line 20, "a nonprofit charitable organization" was inserted, which **Mr. Jensen** confirmed. **SEN. TOOLE** wondered whether "charitable" was defined in statute. **Mr. Jensen** replied it was not defined in Montana statute. **SEN. PERRY** surmised if the bill was amended to read "charitable" in lieu of "Section 501(c)(3)", it could exclude the university's Alumni Association. He suggested to word it "charitable nonprofit and 501(c)(3)". When **Mr. Jensen** agreed this language could be inserted, **SEN. PERRY** asked if this would solve this particular problem. **Mr. Jensen** cautioned it would allow more people to continue to call, as every exemption did. He noted, though, it would allow more people calling for the public good and thus, fewer people would object to those calls. **SEN. RYAN** asked **Mr. Jerry Williams, Butte Police Department**, who had testified during the hearing for SB 62, since the language "nonprofit entity" allowed him to continue his organization's fund raiser, would he be also be covered under "charitable nonprofit". **Mr. Williams** stated according to their tax accountant, they were a nonprofit but not a charitable organization. **SEN. TAYLOR** felt the bill should be passed out to the Senate floor where necessary amendments could be added instead of having a continued discussion in the committee. **SEN. RYAN** added he merely wanted an agreement of what the definitions should be before the bill went to the floor but he was fine with the bill as it stood.

Motion: SEN. MCCARTHY moved that SB 62 DO PASS AS AMENDED.

Discussion:

SEN. STAPLETON opposed the motion but felt SB 62, coupled with SB 327, should be debated by the full body. He opined the objective of having telemarketing reform had not been achieved with this bill; all this bill accomplished was to remove a minute fraction of telemarketers who could no longer invade people's privacy with their calls. **SEN. STONINGTON** lauded the sponsor's effort to tackle this very difficult issue and declared SB 327 encompassed the exact opposite set of complexities. She maintained there were worthy groups who needed the ability to phone their membership, and this bill was a good first step.

Roll Call Vote: Motion carried 8-2, with **STAPLETON** and **TAYLOR** voting no.

EXECUTIVE ACTION ON SB 327

Motion: **SEN. TAYLOR** moved that SB 327 DO PASS.

Discussion:

SEN. STORY introduced **Amendment SB032702.ate**, **EXHIBIT (ens32a08)** which was the same amendment he had withdrawn for SB 62 but since it applied differently to SB 327, he brought it forward for discussion's sake.

Substitute Motion: **SEN. STORY** made a substitute motion that **AMENDMENT SB032702.ATE BE ADOPTED**.

Discussion:

SEN. STAPLETON asked to clarify if this was the amendment which was adopted and then withdrawn for SB 62, and **SEN. STORY** replied it was but SB 327 did not have all the exemption SB 62 had. **SEN. TAYLOR** stated he also had an amendment which dealt with this same issue at which point **SEN. STORY withdrew his motion**.

Substitute Motion: **SEN. TAYLOR** made a substitute motion that **AMENDMENT SB032701.ATE, EXHIBIT (ens32a09), BE ADOPTED**.

Discussion:

SEN. TAYLOR explained this amendment conformed to the federal law by changing the business contact requirement from 180 days to 18 months and asked **Mr. Everts** to elaborate. The latter advised the amendment allowed not only telephone contacts pursuant to Federal Law but also added "communications by or on behalf of any person or entity with whom a residential subscriber has had a business

contact...", and another added communications from a business which is regulated by the federal government and is engaged in selling telephone services to the list of allowable calls. **SEN. STAPLETON** asked what exactly constituted a "business contact". **Mr. Everts** informed him this term was not defined in the bill. **CHAIRMAN JOHNSON** suggested asking **Mr. Jensen** for the definition who remarked this bill fell under the Consumer Protection Act which uses the definitions and rulings of the Federal Trade Commission (FTC). Unfortunately, the FTC definition was the same as the word "business contact", and thus it is unclear whether the contact is defined by a mailing, phone, or in person. He advised some states had substituted the word "sale" for "business contact". **SEN. TAYLOR** wondered whether the constitutionality would be affected if the wording was changed to "sale" or "business transaction". **Mr. Jensen** remarked either term would not affect the First Amendment and cautioned the real issue was "restraint of interstate trade"; he added there might be fewer lawsuits and challenges by allowing pre-existing business relationships. **SEN. TAYLOR** reiterated he brought the amendment to address the business concerns **SEN. McNUTT** and **SEN. PERRY** had expressed; it was not his intention to exclude legitimate business contacts. **SEN. STAPLETON** maintained the committee needed to define the term "business contact" and, above all, exclude mailings or e-mail solicitations from constituting a business contact. **SEN. TAYLOR** asked if this could be included in the amendment, and **Mr. Everts** asked if he could check on this. **CHAIRMAN JOHNSON** suggested **SEN. STAPLETON** fill in the committee on how the new amendment should read under (b), and **SEN. STAPLETON** added the following: "Business contact does not include a mailing or an e-mail originating from an entity." **SEN. MCCARTHY** understood this to be a do-call list and wondered why the committee was considering this amendment since people had signed up to receive these calls. **CHAIRMAN JOHNSON** explained some groups and businesses were on the fringe, such as the insurance companies and investment bankers who had an established relationship with their clients, and the committee wanted to be sure they were not adversely affected by this bill. **SEN. STORY** suggested expanding the definition to include phone calls made 18 months prior to the enactment of SB 327 in order to create a cut-off and start-over point.

{Tape: 2; Side: B}

In answer to **SEN. TAYLOR's** question on how to word this correctly, **Mr. Everts** stated "Business contacts cannot include mailings, unsolicited phone calls made 18 months prior to the effective date of this Act, or e-mails originating from a business." He explained these were exemptions so that those people could be called who were not on the do-call list, in

short, they were exemptions to the term "telephone solicitation". **SEN. STAPLETON** asked **Mr. Jensen** to explain how pre-existing business relationships which would trump the do-call list would fit in with what the committee was trying to accomplish. **Mr. Jensen** referred back to the example involving **SEN. McNUTT's** business and advised he would still fall under the exemption. He admitted he was a bit worried about how the new exemption would play out but thought it would work fine. **SEN. STAPLETON** asked him to identify the five groups of calls were who where exempt in the original, not amended, version of the bill as per earlier testimony, and **Mr. Jensen** replied they were calls for political purposes, calls from pollsters and for surveys, fund raisers as long they are not selling anything, business-to-business calls, and calls from government entities; he added one additional category, namely calls which were previously and specifically authorized. **SEN. STAPLETON** surmised with the proposed amendment as stated by **Mr. Everts**, the committee had excluded three kinds of business contact, namely mailings, e-mails, and contacts older than 18 months. **SEN. PERRY** stated the objective was to eliminate random phone calls by telemarketers, and the example using **SEN. McNUTT's** business featured a targeted group of business contacts; the same was true with examples given by some of the opponents, such as **Mr. Halver** who was concerned about a buyer's agent making calls to find property for sale. He maintained the agent was making calls to a targeted group in the course of doing business.

SEN. TAYLOR asked to vote on each of the two amendments in EXHIBIT (9) separately, saying the issue was whether these amendments addressed the small businessman in Montana or the real estate agent, and protected them sufficiently. **Mr. Everts** explained the amendment in questions merely codified what is in Federal Law in term of existing business relationships.

Substitute Motion: **SEN. TAYLOR** withdrew his original motion that Amendment SB032701.ate be adopted and **made a substitute motion that AMENDMENT SB032701.ATE 1(B)as amended BE ADOPTED.**

SEN. TAYLOR asked if **Qwest** could support this amendment, and **Tom Ebzery, Qwest**, replied it was a necessary amendment and should be added if the bill went forward because it codified the federal government's work, and he felt 1(b) did address the sponsor's concerns regarding the small businessman and the realtor.

CHAIRMAN JOHNSON asked **Mr. Everts** to read the wording in the proposed amendment again before the vote, and he stated: "Business contacts do not include unsolicited mailings, unsolicited phone calls made 18 months prior to the effective date of this Act, or unsolicited e-mails originating from a business."

Vote: Motion that AMENDMENT SB032701.ATE 1(B) BE ADOPTED carried 8-2 with McCARTHY and RYAN voting no, on a Roll Call Vote.

Motion: SEN. TAYLOR moved that AMENDMENT SB032701.ATE 1(c) BE ADOPTED.

Discussion:

SEN. TAYLOR remarked, since Qwest had somewhat of a monopoly, this amendment allowed other phone companies equal access. SEN. TOOLE was glad this included companies like Sprint, MCI, and Worldcom because their numerous calls were a major irritant; he suggested to solve this problem by prohibiting Qwest from circulating their current subscriber list to their telemarketing efforts for long-distance service. SEN. STONINGTON asked the sponsor why he exempted these telephone companies. SEN. TAYLOR replied he wanted to preserve the constitutionality of the bill by not exempting just one telephone company. SEN. STONINGTON clarified her previous question, asking why he had exempted the phone companies at all. SEN. TAYLOR explained they could not be exempted legally because they had a previous business relationship but deferred to Mr. Everts who explained the committee had just adopted the amendment 1 (b) allowing a certain business contact to occur. SEN. STONINGTON still wondered why (c) was necessary. Mr. Everts stated it allowed the other entities involved in the telephone business to make these contacts as well. SEN. STONINGTON commented if these contacts were authorized by Federal Law as the sponsor maintained, they would be covered under line 26 on page 1 of the bill. Mr. Everts disagreed, saying he did not believe they were covered. SEN. TOOLE remembered this issue came up during testimony on SB 62; it was not just the business relationship with a company like Qwest or Sears but also the affiliated businesses. He suggested a different approach, namely to simply tell Qwest they could not use the existing business relationship because it gave them an unfair advantage over the other phone companies. He repeated these were the most common offenders, and this amendment was giving them carte blanche. He offered to bring forth an amendment he had originally prepared for SB 62 to prohibit such a situation. SEN. TAYLOR opposed putting such an amendment on his bill, saying it should stay with SB 62 which gave Qwest a monopoly. He feared not adopting part 1 (c) of his amendment would present a constitutional problem because the committee had just adopted the existing business relationship provision. CHAIRMAN JOHNSON invited Mr. Jensen to comment on this issue.

{Tape: 3; Side: A}

Mr. Jensen explained phone companies did not have an exemption under Federal Law; the federal do-not-call list did not affect

them because the FTC lacked jurisdiction over common carriers which included phone companies. He suggested the committee could specify all telephone companies have to obey a do-not-call or do-call list since they were the most frequent telemarketers, or, to go with the sponsor's approach, "all telephone companies have the right to call". **SEN. TOOLE** commented the committee could also specify no business could pass their list to affiliated businesses for purposes of telemarketing. **Mr. Jensen** agreed this could be done. **SEN. RYAN** asked whether the intent of this amendment was that all phone companies can engage in telemarketing for their products. **CHAIRMAN JOHNSON** turned to **Mr. Everts** and asked if it would open the door to all telephone companies if (c) was added, and if only Qwest could engage in this practice if (c) was not adopted,. **Mr. Everts** replied those phone companies who had a pre-existing business relationship under (b) would still be allowed to make these calls, and if (c) was passed, it would allow all phone companies to make the calls.

SEN. STORY questioned the need for this amendment since companies could just do their advertising and soliciting by mail.

SEN. STAPLETON agreed, saying he, too, would resist this amendment because it was not needed; Qwest was not necessarily the issue because people were apt to make other choices with regard to telecommunications in the future. **SEN. TAYLOR** maintained Qwest had an unfair advantage if 1 (c) was not adopted; all he wanted was to create a level playing field, and it was up to the committee to exclude all phone companies. **Todd Everts** offered to clarify the issue and stated a telephone company's pre-existing relationship was covered under 1(b).

Vote: Motion that AMENDMENT SB032701.ATE 1(c) BE ADOPTED failed 1-9 with TAYLOR voting aye, on a Roll Call Vote.

Motion/Vote: SEN. TAYLOR moved that AMENDMENT SB032701.ATE ITEM (2) BE ADOPTED. Motion carried unanimously.

SEN. TAYLOR referred to EXHIBIT (3), Amendment SB006206.ate brought earlier by **SEN. RYAN**, and asked to apply it to SB 327 as well since it would strengthen it also. The committee had discussed it at length during Executive Action on SB 62, and **CHAIRMAN JOHNSON** suggested a voice vote.

Vote: Motion that AMENDMENT SB006206.ATE BE ADOPTED carried unanimously.

SEN. TOOLE introduced EXHIBIT(ens32a10), Amendment SB006204.ate which was drafted for SB 62 originally but did apply to SB 327. He explained it dealt with the issue of signing up for a credit

card and ending up on the lists of affiliated businesses, and also with Qwest's practice of using the customer list for telemarketing purposes.

Motion: SEN. TOOLE moved that AMENDMENT SB006204.ATE BE ADOPTED.

Discussion:

SEN. RYAN asked if we had the ability to tell a business who sold their customer list to another business they could not do so if the list was to be used for telemarketing purposes. **Mr. Jensen** felt the ability existed but it was an issue currently being litigated because it put limits on what a business could do with information they had gathered. He was certain Montana's Privacy Rights Act would give it the power to make sure these lists were not divulged, though. He also commented small business would be the main beneficiaries of the pre-existing business relationship clause since most large companies were made up of many subsidiaries and could not exchange this information. **SEN.**

McCARTHY addressed **Mr. Jensen** and asked whether this amendment would change the format of store credit card applications which had presented a problems as per earlier discussions. **Mr. Jensen** replied it probably would, depending on how the GLB Banking Act was affected this legislation; he added the customer list could still be passed on but could not be used for telemarketing purposes.

Vote: Motion that AMENDMENT SB006204.ATE BE ADOPTED carried unanimously.

Motion: SEN. TAYLOR moved that SB 327 DO PASS AS AMENDED.

Discussion:

SEN. PERRY referred back to a question he raised during the discussion on SB 62 on January 14, 2003, where he had asked if the premise of SB 62 should not be turned around and remarked SB 327 had done exactly that. In SB 62, the consumer who was already paying for his telephone service had to take an active step to prevent these calls, whereas SB 327 performed this service for the 500,000 telephone subscribers. He went on to say all of his concerns had been satisfactorily addressed and resolved, and wanted it to be known he wholeheartedly supported SB 327. **SEN. RYAN** cautioned this bill delivered a false promise because of the constitutional issue; he added as much discussion as had taken place in the committee, consumers would have a difficult time wading through the provisions and exemptions of SB 327. Moreover, he favored the do-not-call approach because it required the consumer to take action to stop the businesses from

calling, and thus it did not raise any constitutional issues. He pointed to the lengthy discussion about the pre-existing business relationship issue, and how it had led to numerous exemptions in the interest of fairness and constitutionality; the do-not-call list approach, on the other hand, had no such ramifications. He advised if this bill were to pass, it would certainly be challenged in court and struck down, leaving the people of Montana without any protection. **SEN. STAPLETON** charged one of the most precious rights was the right to be left alone, and SB 327 was the proper vehicle; he added Montana's Constitution had one of the strongest privacy clauses anywhere. He admitted it was a difficult issue to solve; **SEN. RYAN** himself had sponsored another telemarketing bill, SB 2, which he did not defend in the end. In all, five different telemarketing bills had been introduced, and he was not sure any one was the perfect one, but, judging from all the pleas he had received, the people of Montana were tired of telemarketing calls and wanted the legislature to do something about it. **SEN. RYAN** responded he had brought SB 2, which was the first of its kind, at the request of a constituent and came to realize, along with the committee, SB 62 was a better bill. He also reminded the committee he himself had tabled SB 2 because he realized SB 62 would get the job done at no expense to the consumer. **SEN. TAYLOR** made a plea to pass SB 327 so the full body could discuss the pros and cons. He disagreed with the intimation the Department of Administration did not possess enough legal expertise to confirm the constitutionality of his bill and lastly lauded **SEN. PERRY's** perception that 500,000 people did not have to do anything to stop telemarketing calls with the passage of SB 327.

Vote: Motion that SB 327 DO PASS AS AMENDED carried 6-4 with MCCARTHY, RYAN, STONINGTON, and TOOLE voting no, on a Roll Call Vote.

{Tape: 3; Side: B}

HEARING ON HB 266

Sponsor: REP. HAL JACOBSON, HD 54, HELENA

**Proponents: Ben Havdahl, MT Telecommunications Access Program
Ed Van Tighem, self
Betty Van Tighem, self
Geoff Feiss, MT Telecommunications Assn.
Tom Ebzery, Qwest
Mike Strand, MT Independent Telecommunications
Systems**

Opponents: **Steve Gettel, Superintendent, MT School for Deaf and Blind (MSDB)**

Opening Statement by Sponsor:

REP. HAL JACOBSON, HD 54, HELENA, opened by saying HB 266 dealt with the Montana Telecommunications Access Program (MTAP) which is being paid for by a special assessment of 10 cents per telephone access line. The program was established to aid some 70,000 Montanans who are deaf or hearing impaired, and it provides financial assistance to people with limited means to access hearing enhancement equipment. He went on to explain HB 266 removed a component which provided for infant hearing screening equipment for hospitals, stating this was no longer needed as most hospitals and clinics had already taken advantage of this provision. HB 266 also removed an allocation of \$57,000, diverted from this MTAP fund to the Montana School of the Deaf and Blind (MSDB) which had it used primarily to purchase infant hearing screening equipment, in order to funnel the money back into the program for which it was originally designed. Lastly, the bill changes the means testing program used in determining eligibility for receiving funds from this program by setting the ceiling at 400% of the poverty level; he added an amendment was being drafted which set the ceiling at 250%.

Proponents' Testimony:

Ben Havdahl, MTAP, provided written testimony, **EXHIBIT(ens32a11)**.

Ed Van Tighem, self, rose in support of HB 266 as a member of the Montana Association of the Deaf as well as MTAP and stated this program had brightened the lives of all hearing impaired by enabling them to lead independent lives. Prior to the program's inception, the deaf and hearing impaired had to rely on family members and friends to make phone calls for them, and often did not have the full information relayed back to them. He told of a 78 year old uncle who was deaf and who, through a teletype device for the deaf (TTY), used a telephone for the first time since the 1940's. Another uncle was finally able to communicate with his children and grandchildren who live out of state, with the help of devices provided through MTAP.

Betty Van Tighem, signed her testimony with the help of her husband, Ed Van Tighem. She stated she, too, had to depend on her family and hearing neighbors to make phone calls which voided her right to privacy. It necessitated frequent trips to her doctors' offices, for instance, to make appointments without the whole neighborhood knowing about them. She praised the

assistance MTAP provided because it allowed her access to the telephone which in turn gave her a measure of independence.

Geoff Feiss, MT Telecommunications Association, also stood in support of HB 266 and explained the Telephone Relay Service (TRS) was a federal mandate funded by the 10-cent per line charge on subscribers' phone bills, and he lauded the sponsor for ensuring the contributions earmarked for MTAP actually went to the program.

Tom Ebzery, Qwest, applauded the efforts to bring this bill forward because it supported a worthy cause.

Mike Strand, MT Independent Telecommunications Systems, stated his organization was very active in the MTAP program and agreed with previous testimony. He added the funds collected over the years exceeded the expenses of the program and thus had been diverted by past legislative sessions but now, the opposite was true, and he feared the special charge would have to be increased by the next Legislature. He therefore did not advocate continuing the diversion of funds from the program, otherwise new ways of funding would have to be found even sooner.

Opponents' Testimony:

Steve Gettel, Superintendent, MSDB, asked to sign his testimony for the hearing impaired in the audience. He stated he had struggled with having to oppose a bill which benefitted people he had long been associated with but eliminating the \$57,000 allocated by the 2002 Special Session created an immense hardship for the school, especially since they were already down by \$75,000. Passage of this bill meant they would have to further reduce their budget and with the state's budget woes, he knew anyone would be hard-pressed to find additional funds. He stressed the school needed adequate funding in order to provide an appropriate education for the 75 students at MSDB and the 275 more being taught through the school's outreach programs; a \$57,000 reduction would force a reduction in staff, putting them back to where they were when the 2002 Special Session allocated those funds. He was in a quandary because he realized the MTAP program was critical to the needs of Montana's deaf and hearing impaired. In closing, he contradicted a statement made by proponents of HB 266, stating the school did not spend the money allocated by the special session for equipment but used it to pay for staff, and he did not like having Section 2 (c) stricken because this was a service the school provided. He added since the Appropriations Subcommittee had already made their decision, he had no other option but to ask to have the allocation of \$57,00 returned to his school.

{Tape: 4; Side: A}

Informational Testimony:

Kryss Kuntz, MTAP, came forward to clarify what HB 266 would do, and how it would impact MTAP. She explained 60% of their budget served to provide relay services and in these tough economic times, her organization was right on the cusp of achieving functional equivalency which had always been the intent of the Americans with Disabilities Act (ADA) and the FCC. Implementing services such as video relay services (VRS) and captioned telephones required a lot of money from both the state and the program. Because of its ease of use, she foresaw especially captioned telephone service bringing in many Montanans who had never used relay services before. It did not require going through an 800-number or dialing 711 and could be used just like a regular telephone. She mentioned the impending reduction in equipment distribution recommended by the Governor's committee which would result in MTAP's inability to meet the ADA's requirements, and claimed this would be compounded if MTAP funds were diverted to other programs. Lastly, she stressed without passage of HB 266, MTAP would not be able to provide relay service as mandated by law.

Questions from Committee Members and Responses:

SEN. McCARTHY referred to EXHIBIT (11) where it stated "Equipment funding has been exhausted" and asked whether he foresaw any hospitals in Montana needing this funding and whether any of this type of equipment needed to be replaced in the near future. **Mr. Havdahl** replied to his knowledge, MTAP had distributed \$187,000 worth of equipment of which they had provided \$100,000, and another \$100,000 had come through a federal grant, and he affirmed all of the available state money had been committed or spent. **SEN. McCARTHY** repeated her question of whether this equipment ever needed to be repaired and updated, thus necessitating continued funneling of money into this fund. **Mr. Havdahl** described the equipment as a small black box with a device which could be fitted on the forehead of an infant as young as 5 days old and would detect whether the baby was hearing impaired or suffered from some other kind of brain disorder. The price for this device ranged from \$6,000 to \$10,000, and he was not sure how often it needed to be replaced. **SEN. STAPLETON** surmised this bill was attempting to repeal SB 27, a bill he had carried during the Special Session 6 months prior. **REP. JACOBSON** stated it was an attempt to re-divert the money to the original agency. **SEN. STAPLETON** advised the law had been changed, allocating \$57,000 annually to the Montana School for the Deaf

and Blind because an audit had revealed the MTAP funds were continuing to grow, and the diversion of funds would have very little impact on the organization. He wondered if the sponsor knew what the fund balance was. **REP. JACOBSON** submitted **EXHIBIT (ens32a12)** and stated the seemingly large pool of money had decreased substantially. **SEN. STAPLETON** wondered whether large sums had been spent as soon as SB 27 was passed. **REP. JACOBSON** referred the question to **Ms. Kuntz** who disagreed with this assessment, explaining their EPP requests had to be submitted to the Health and Human Services Subcommittee long before the special session occurred. The fund balance was decreasing because of the new technology she had addressed earlier which the FCC required to be included in their services; as the program administrator, she had to anticipate the FCC's mandates and time line. **SEN. STAPLETON** stated he, along with **Mr. Van Tighem** and **Mr. Gettel**, served on the board of the MSDB and out of concern had looked at the fund balance which had been nearing \$700,000 over the past few years; since it was so high, they felt taking \$57,000 each year for the next two years would not hurt that program but now, he was told by her and **Mr. Strand** it would run out of money by the year 2005; he admitted he did not fully understand why the numbers differed so greatly from what they were six months ago. **Ms. Kuntz** explained the statute did not provide a two-year sunset for the diversion of \$57,000, and she would not know the amount of funding for MTAP at the end of fiscal year 2005 until the executive budget committee had made their decision; she repeated their funds would be depleted because of the development of new technology. **SEN. STAPLETON** questioned they would only have \$114,000 left in two years, even without passage of this bill. **Ms. Kuntz** did not know what he was trying to say, and **SEN. STAPLETON** repeated the \$114,000 was small compared to the principal which had been there for a number of years, and he did not understand how this amount could deplete their funds should this bill not pass. **Ms. Kuntz** qualified her remarks by saying her expenditures would start exceeding revenue as of 2003, and by 2005 the fund would be depleted enough to where she would not even be able to administer the program, let alone purchase and distribute relay service devices. **SEN. STAPLETON** insisted there was a big difference between expenditures exceeding revenue and depletion of half a million dollars. **SEN. STONINGTON** remarked, as a member of the subcommittee, she knew re-allocation of the \$57,000 to MSDB had passed after they, too, had looked at the ending fund balance in anticipation of the changes in technology and the increased demand for the service. She stressed that everyone is paying into the fund through the 10 cent charge on the phone bills, and the fund was set up to help the hearing impaired and not hire staff at the MSDB. The subcommittee was concerned enough with impending expenses that they decided to cut back on the purchase

of new equipment; she explained the amendment changing eligibility requirements from 400% of federal poverty level back to 250% was designed to avert further hardship. **SEN. STAPLETON** commented he thought the general government subcommittee oversaw MSDB, which **SEN. STONINGTON** confirmed, adding the health and human services subcommittee oversaw MTAP, and they could cut or appropriate monies to the MTAP fund. **CHAIRMAN JOHNSON** cautioned this conversation should be carried out internally. **SEN. STORY** asked what a person's current contribution was towards using this equipment if he was between 250% and 400% of federal poverty level (FPL). **Ms. Kuntz** replied it depended on the cost of the equipment and also factored in his income; she claimed the proposed amendment was brought to simplify this formula. **SEN. STORY** asked for an estimate because he wanted to know what those people's co-payment would be who were affected by the change from 400% to 250% of FPL. **Ms. Kuntz** advised someone in the 390% of FPL would have a co-payment very close to the cost of the equipment but would not own it; it would still be property of MTAP. She cited prices of \$250 to \$300 for a text telephone, or about \$110 for an amplified telephone costing \$125. **SEN. STONINGTON** ascertained the service itself was not constrained by income level, and asked if language on page 2, line 28 of the bill stating there would be a means test of up to 400% for participation in the program should not be stricken since the qualification was made with regard to the equipment. **Mr. Havdahl** agreed with her, saying the only part of the program the FPL applied to was the equipment, the relay service was for everybody. **SEN. STONINGTON** felt this might have to be dealt with through an amendment. **CHAIRMAN JOHNSON** asked **Ms. Kuntz** if her projected budget depletion was based on the new figure of 400% of FPL or 250% of FPL because **Mr. Havdahl's** numbers were different from hers. **Ms. Kuntz** advised her projections were based on the 250%. **CHAIRMAN JOHNSON** then wondered if the switch to 400% of FPL would accelerate a situation where expenses would exceed revenue, which **Ms. Kuntz** confirmed. **SEN. STAPLETON** addressed **Mr. Gettel** and asked whether he could support HB 266 if the \$57,000 was restored to his school. **Mr. Gettel** replied he supported everything in HB 266 except the provision to remove the money from MSDB. **SEN. STAPLETON** asked him if he would support discontinuing this support at some point in the future, and **Mr. Gettel** assured him he would because he knew this money was meant to fund telecommunication service to the hearing impaired, and not his school.

{Tape: 4; Side: B}

SEN. STORY wondered if **Mr. Gettel** knew when subsection (c) was put into the statute, and when he declined, **Ms. Kuntz** advised it was during the 2001 session. **SEN. STORY** commented subsection (c)

was added to allow hospitals to buy screening equipment, and he asked what MSDB's role was since hospitals already screened infants as young as 5 days old. **Mr. Gettel** replied the school employed an audiologist who also saw infants but now that the hospitals' screening process was implemented and running, the audiologist would not be seeing many infants, except some from the Great Falls community. **SEN. STORY** asked what authorization he would have as far as spending the money should it be restored to his school. **Mr. Gettel** explained the hospitals would furnish a diagnosis based on the screening, and the school's audiologist and consultants would do the follow-up, and their purpose was to provide services for the families so they could adapt to the correct mode of communication. He stressed this was one of the school's most important functions because the children would not learn any communication skills if the families could not provide a program in the home. **SEN. STORY** stated the original law was passed with the provisions (a) and (b) in Section 2, and he asked whether these were federal requirements. **Ms. Kuntz** told this law was passed in the 1989 session, and she had not participated in the program's creation, since she joined MTAP in 1990. She knew, though, that the program was established in compliance with the ADA, and stressed (b) stemmed from the federal guidelines, making it mandatory that all states provide functionally equivalent relay service. **SEN. STORY** wondered what good equipment did if people who were illiterate could not use it. **SEN. McCARTHY** asked whether the \$57,000 could be re-allocated to MSDB if the language in the title of the bill "removing the requirement for assisting facilities in obtaining infant screening equipment" was stricken since this was the \$100,000 item listed in EXHIBIT(11), and the equipment was already in place. **Ms. Kuntz** said this would not make the money available for the school because of the way the original bill was written. It would bring back language on page 2, lines 13 and 14 which would not allow them to use it for hiring staff. **SEN. McCARTHY** insisted taking the above language out of the bill would restore \$100,000, and if **Todd Everts** could rewrite it without any other changes, MSDB would have most of their money back. **Ms. Kuntz** stated she would respect the committee's decision but asked, if this change was made, the committee would also provide for a 2004/2005 appropriation. **SEN. STONINGTON** thought the \$100,000 had already been expended and was no longer available, and if \$100,000 was diverted, it would be taken directly out of MTAP's program. **SEN. RYAN** asked if **Mr. Gettel** had understood this money to be an ongoing source of revenue for MSDB. **Mr. Gettel** replied he had discussed this issue with a number of people at the time, including representatives of MTAP, but did not formulate an opinion as to whether this would be ongoing. However, the amendments adopted during the special session did not indicate a sunset.

Closing by Sponsor:

REP. JACOBSON closed on HB 266, suggesting a meeting between him and **SEN. STORY**, who had agreed to carry the bill in the Senate, to discuss the concerns of **SEN.'s STAPLETON** and **McCARTHY**.

EXECUTIVE ACTION ON SB 316

SEN. STORY introduced **Amendment SB031601.ate, EXHIBIT(ens32a13)** and explained it provides the \$20 million credit for each distinct mining operation as opposed to current statute which makes it a one-time credit.

Motion/Vote: **SEN. STORY** moved that **AMENDMENT SB031691.ATE BE ADOPTED**. Motion carried unanimously.

Motion/Vote: **SEN. STORY** moved that **SB 316 DO PASS AS AMENDED**. Motion carried 9-1 with **TOOLE** voting no.

EXECUTIVE ACTION ON SB 290

Motion: **SEN. TAYLOR** MOVED **SB290 DO NOT PASS**.

Substitute Motion/Vote: **SEN. STAPLETON** made a substitute motion that **SB 290 BE TABLED**. Substitute motion carried 9-1 with **MCNUTT** voting no.

SEN. STONINGTON proclaimed many people had waited all afternoon to listen to the discussion of SB 290 during Executive Action, and she felt it inappropriate to just dispose of it without a discussion.

Motion: **SEN. STONINGTON** moved to reconsider action on SB 290.

Discussion:

SEN. STAPLETON commented everyone, including all members of the committee, had been present for over three hours, and the committee was well within its rights to table this bill. He wanted it known he was resisting her motion. **SEN. STONINGTON** repeated she came forward out of respect for the process, the sponsor and the people who brought this bill forward; she felt they deserved to know the committee's thoughts and deliberations.

Vote: **MOTION TO RECONSIDER SB 290** passed 9-1, with **STAPLETON** voting no.

Motion: SEN. STONINGTON moved that SB 290 DO PASS.

Discussion:

SEN. STONINGTON stated, even though she voted in favor of tabling SB 290, she owed it to the people who had lobbied for the bill to let them hear the committee's views. Initially, she herself supported the concept but changed her mind after Mr. Blundell spoke to the bill because his testimony made it clear this was an anti-competition bill. She stressed she was in favor of the proliferation of wireless services, and she would support any new company which qualified for the Universal Service Fund. She also believed the PSC had, within its current authority, the ability to set qualifying criteria. SEN. STORY agreed with her. SEN. RYAN recalled a conversation with a PSC employee who assured him the commission had the authority to set these criteria, and just like SEN. STONINGTON, he worried that this bill would cut off competition; on the other hand, he wondered if the benefits would be extended undeservedly since wireless service was not ideal in many parts of the state because of lack of coverage.

{Tape: 5; Side: A}

He was also not convinced this bill would downgrade service as some proponents had inferred. SEN. PERRY stated he opposed this bill because it seemed federal funds were being used to squelch competition.

Vote: Motion that SB 290 DO PASS failed 2-8 with MCNUTT and RYAN voting aye.

Motion/Vote: SEN. STONINGTON moved that SB 290 BE INDEFINITELY POSTPONED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 6:55 P.M.

SEN. ROYAL JOHNSON, Chairman

MARION MOOD, Secretary

RJ/MM

EXHIBIT (ens32aad)